

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EDWIN CUELLO,

Plaintiff,

v.

9:24-CV-0053  
(GTS/ML)

ALAN WEAVER, Lieut. # 937, Delaware Cnty. Corr. Fac.;  
DONALD SIMONDS, Corr. Officer / Sgt. # 2492,  
Delaware Cnty. Corr. Fac.; and DANIEL McGOWAN,  
Corr. Officer # 791, Delaware Cnty. Corr. Fac.,

Defendants.

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APPEARANCES:

EDWIN CUELLO, 55909  
Plaintiff, *Pro Se*  
Albany County Correctional Facility  
840 Albany Shaker Road  
Albany, NY 12211

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* prisoner civil rights action filed by Edwin Cuello (“Plaintiff”) against the three above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”) pursuant to 42 U.S.C. § 1983, is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that Defendants’ motion to dismiss Plaintiff’s Complaint be granted in part and denied in part. (Dkt. No. 18.) Plaintiff has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (*See generally*, Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Lovric’s

thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.<sup>1</sup> Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein, Defendants' motion to dismiss is granted in part and denied in part.

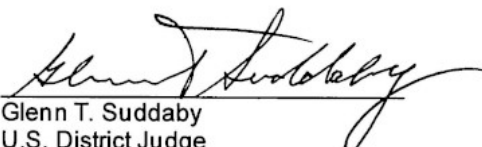
**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Lovric's Report-Recommendation (Dkt. No. 31) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 18) is **GRANTED in part** such that Plaintiff's Eighth Amendment failure-to-intervene claim against Defendants McGowan and Simonds is **DISMISSED**; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 18) is **otherwise DENIED** such that Plaintiff's Eighth Amendment excessive-force claims against all three Defendants, and Plaintiff's Eighth Amendment failure-to-intervene claim against Defendant Weaver, **SURVIVE** Defendants' motion to dismiss.

Dated: March 25, 2025  
Syracuse, New York

  
Glenn T. Suddaby  
U.S. District Judge

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<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).